

## THE VIRTUAL ASSET AND INITIAL TOKEN OFFERINGS SERVICES ACT

### FSC Rules made by the Financial Services Commission under sections 31 and 52 of the Virtual Asset and Initial Token Offerings Services Act

#### PART I – GENERAL PROVISIONS

##### 1. Citation

These rules may be cited as the Virtual Asset and Initial Token Offerings Services (Publication of Advertisements) Rules.

##### 2. Interpretation

“Act” means the Virtual Asset and Initial Token Offerings Services Act;

“advertisement” means commercial and promotional materials:

i. communicated through any medium and in any form, including:

- a. magazines and newspapers;
- b. radio and television;
- c. outdoor advertising, including billboards, window display and signs at public venues;
- d. the internet, including webpages, banner advertisement and social networking (e.g. Facebook and Twitter);
- e. product brochures and promotional fact sheets;
- f. direct mail (e.g. by post, facsimile or email);
- g. telemarketing activities; and
- h. seminars and presentations to groups of people.

and

ii. used for the marketing or promotion of relevant products / services to consumers in Mauritius; and

iii. which are distributed through any medium currently known or hereafter developed;

“applicable Acts” has the same meaning as in the Act;

“asset” has the same meaning as in the Act;

“cold call” means advertisement or promotion made during the course of a personal visit, telephone conversation or other interactive dialogue, that the recipient did not initiate or expressly request;

“Commission” has the same meaning as in the Act;

“consumer” means any actual or potential client to who is intended to receive an advertisement;

“FSC Rules” has the same meaning as in the Act;

“initial token offerings” or “ITO” has the same meaning as in the Act;

“Issuer of Initial Token Offerings” has the same meaning as in the Act;

“licence” has the same meaning as in the Act;

“person” has the same meaning as in the Act;

“relevant products / services” are those provided in connection with, or by reference to, virtual assets;

“relevant Acts” has the same meaning as in the Financial Services Act;

“virtual asset” has the same meaning as in the Act;

“virtual asset service provider” has the same meaning as in the Act.

### **3. Scope of the rules**

- (1) These rules shall apply to all virtual asset service providers that carry out business in or from Mauritius as well as all virtual asset service providers which intend to advertise and market relevant products / services in Mauritius.
- (2) These rules shall be read in conjunction with the Act, applicable Acts, relevant Acts and guidelines which the Commission may issue from time to time.
- (3) These rules shall not apply to the following:
  - (a) Advertising agencies when they are designing advertising materials for virtual asset service providers;
  - (b) Persons printing advertising and marketing materials for virtual asset service providers;
  - (c) Communication professionals providing services to virtual asset service providers; and
  - (d) Persons responsible for securing the placement of an advertisement, provided they are not responsible for the contents thereof.
- (4) In addition, the following categories of persons who may not, in practice, be deliberately aware of the fact that they may be distributing advertising and marketing materials of financial products, will not be considered as promoting same by the Commission. This list is, however, not to be considered as exhaustive.
  - (a) Postal service providers;
  - (b) Telecommunication service providers (for example, Internet);
  - (c) Broadcasting service providers;
  - (d) Web hosting providers;
  - (e) Courier service providers;
  - (f) Persons employed to hand out or disseminate communications; or
  - (g) Newsagents who sell newspapers and journals, containing advertisements of financial products or services.
- (5) These rules will not be applicable to situations whereby a virtual asset service provider provides additional information to its existing clients by telephone (“help-lines”) in relation to the products and services already purchased by these clients, without any form of inducement for them to purchase additional products or services of the virtual asset service provider.

- (6) In addition to complying with these rules, an Issuer of Initial Token Offerings must also comply with the disclosure requirements set out in the Act.

## **PART II – GENERAL REQUIREMENTS**

### **4. The general requirements**

- (1) Advertisements for relevant products / services shall be fair, clear, complete, concise, unambiguous and unbiased, and should not be false, misleading nor deceptive.
- (2) Advertisements shall contain information that is timely and consistent with any relevant products / services.
- (3) Where the contractual or other documentation for relevant products / services contains a special risk warning, any advertisement in relation to those relevant products / services shall not suggest that the relevant products / services are “low risk”.
- (4) Advertisements shall convey an equitable message in respect of the returns, benefits and risks associated with relevant products / services.
- (5) Advertisements must be clearly identifiable and the media chosen for an advertisement must be suitable for that advertisement.
- (6) Before selling any relevant products / services as a consequence of an advertisement, a virtual asset service provider must ensure that consumers have received sufficient information regarding such products or services to make an informed decision. This includes ensuring that the Virtual Asset and Initial Token Offerings Services (Client Disclosure) Rules are complied with.
- (7) When assessing whether an advertisement conforms to the principles of these rules, the Commission shall consider both the spirit and the specific letter of these rules.

### **5. Responsibility for advertisements**

- (1) Under no circumstances, a virtual asset service provider may disclaim its liabilities in respect of the accuracy of an advertisement.
- (2) Virtual asset service providers must ensure that any person acting on behalf of the virtual asset service provider complies with these rules, and the virtual asset service provider shall be liable and responsible for such persons as if the virtual asset service provider had undertaken the relevant action or inaction itself.

## **PART III – DISCLOSURE REQUIREMENTS**

### **6. Target Audience**

- (1) Advertisements shall be in plain language as to be capable of being clearly understood by the audience that might reasonably be expected to see it. Advertisements shall not state or imply that relevant products / services are suitable for a particular class of consumers unless the virtual asset service provider has assessed that the relevant products / services are suitable for that class of consumers.

- (2) If relevant products / services are complex, for example because they involve the use of derivatives, they must only be directed to the targeted group of persons for which they are appropriate, and shall not be marketed or promoted to a wider audience.

## **7. Disclosure requirements**

- (1) Virtual asset service providers must avoid extensive use of technical, legal terminology or complex language and the inclusion of excessive details in an advertisement which may not convey a clear message to the consumers, if the likely audience is unfamiliar with the concepts.
- (2) A virtual asset service provider must ensure that all advertisements:
- (a) include the virtual asset service provider's full name and licence.
  - (b) are accurate and up to date, do not omit any material relevant facts, and do not make definitive statements that cannot be substantiated.
  - (c) which make assumptions ensure that the assumptions are stipulated.
  - (d) use a design and presentation that shall be easily and clearly understood.
  - (e) use a tone that does not undermine the importance of the risks, and make clear if a consumer's capital is at risk.
  - (f) shall not be given undue prominence of benefits compared to risks, and always give a fair, balanced and prominent indication of any relevant risks when referencing potential benefits.
  - (g) only refer to relevant products / services as having regulatory protection where this is accurate and not misleading.
  - (h) are consistent with any other information provided by the virtual asset service provider.
  - (i) shall disclose adequate information concerning all applicable taxes and the impact of such taxes on consumers, and clearly state that tax treatment depends on the individual circumstances of each consumer and may be subject to change in future. Consumers should be informed that it is their responsibility to seek additional and independent tax advice, in the light of their specific financial circumstances.
  - (j) which present yield figures must provide a balanced impression of both the short and long term prospects of the relevant products / services.
- (3) Where the information is sourced externally and is disclosed as such, the virtual asset service provider shall ensure that the information is accurate, complete and up-to-date.
- (4) A virtual asset service provider must ensure that all advertisements do not:
- (a) include words (such as "guaranteed", "safe", "secure", "risk-free", "protected", "warranty", "guarantee" or "promise") that may lead consumers to believe that they cannot lose money or that capital is guaranteed. Save and except, where an advertisement guarantees or assures any minimum rate of return or yield, resources sufficient to support such a guarantee may be indicated.
  - (b) use phrases such as "best performing" or "first" unless they are appropriately supported by an independent source available to the consumers for verification.
  - (c) provide the impression to consumers that their savings or investments will invariably increase in value. The language used must avoid implying any urgency or emergency for making savings or investments, save and except, where regulatory deadlines apply. Words including but not limited to "get rich quick", "greater wealth awaits you", "you too can be rich", "invest now before it is too late" shall be avoided.

- (d) use unreasonably promising language as regards the potential return to be derived from relevant products / services. Statements such as “high rewards await you”, “you will reap high returns”, “you will be a winner” shall not be allowed.
  - (e) aim to undermine competitors in such a way as might jeopardise the reputation of the virtual asset industry. The advertisement should be clear and in simple language and, where applicable, contain support graphics.
  - (f) suggest that a virtual asset is either a security or not a security where this is misleading or inaccurate.
- (5) Virtual asset service providers should only make a comparison, reference to past performance or future performance where this can be provided in a way that is clear, accurate, fair, balanced and not misleading, and does not take unfair advantage of the recipient of the communication (for example by creating a fear of missing out).
- (6) A virtual asset service provider must consider advertisements in the context of the whole of the customer journey, and ensure that advertisements do not disguise, diminish or obscure important statements or warnings.
- (7) Virtual asset service providers shall ensure, where applicable, that any reference to the involvement of the Commission in the advertisement shall not be construed or imply that the Commission has approved the advertisement or taken the responsibility for the soundness of the relevant products / services, or that it has recommended relevant products / services, or that statements and opinions expressed in the advertisement are true and accurate. The logo of the Commission and any such licence, authorisation or registration issued by the Commission shall not appear or be reproduced in an advertisement without the express authorisation of the Commission.
- (8) Virtual asset service providers shall not use the name of any regulator, including the Commission, in a way that is misleading and shall not use the name of any regulator, including the Commission, without seeking prior approval with concerning regulator or the Commission.
- (9) In addition to the disclosure requirements set out in these rules, virtual asset service providers should also ensure that they comply with the disclosure requirements set out in the Act.

## **8. Performance Information**

- (1) A virtual asset service provider must ensure that all advertisements:
- (a) do not contain any projection of performance returns based on borrowing plans.
  - (b) that refer to a comparison, ensure that:
    - (i) the comparison is meaningful and presented in a fair and balanced way;
    - (ii) the sources of the information used for the comparison are specified; and
    - (iii) the key facts and assumptions used to make the comparison are included.
  - (c) that refer to past performance:
    - (i) contain a clear and prominent statement that past performance is not an indicator of future performance;
    - (ii) clearly state the reference period and the source of the information provided; and
    - (iii) is based on objective information.
- (2) For relevant products / services which have been available for a period shorter than twelve months, any description of past performance must not be presented in annualised terms. Advertisement for relevant products / services with a track record of less than 6 months must not refer to past performance.
- (3) Advertisements that refer to future performance must ensure that:

- (i) the information gives a balanced impression (covering both negative and positive scenarios);
  - (ii) it is clear as to what the basis is on which future performance is predicted; and
  - (iii) there is a clear and prominent statement that such forecasts are not a reliable indicator of future performance.
- (4) A virtual asset service provider should not provide information on future performance if it is not able to obtain the objective data to substantiate the claim. Future performance must not be based on nor refer to simulated past performance.
- (5) If there has been, or will be, any change or restructure in relation to relevant products / services, the advertisement shall state this fact and state also whether and/or describe to what extent any presentation of performance information therein, shall be affected by these changes to ensure that the presentation is fair and not misleading.
- (6) Where performance awards received are included in an advertisement for relevant products /services, the grantor of the award shall be clearly identified and the award explained. An advertisement shall make it clear if an award is granted by a person related to the virtual asset service provider.

## **9. Fees and Costs**

- (1) Where a fee or cost is referred to in an advertisement of relevant products / services, it must give a realistic impression of the overall level of fees and costs a consumer is likely to pay. When a claim about a fee or cost is used in the heading of an advertisement, any exclusions or qualifications shall also be contained within the heading or be clearly and prominently noted within the advertisement.
- (2) Where an advertisement for relevant products / services makes a claim about the fees or costs associated with advisory services, this must be clearly stated, and any qualification must be clearly and prominently noted in the advertisement. Where applicable, the disclaimer 'terms and conditions apply' may be included in the advertisement. The advertisement shall not suggest that the advisory service is 'free' or 'low cost' if, in fact, the consumer will pay for the service indirectly through the fees and costs of the relevant products / services (for example, where commissions are derived from product fees and these are not rebated to the consumer or costs associated with the advisory service).
- (3) An advertisement for relevant products / services shall state clearly when certain benefits are mutually exclusive, that is, which cannot be simultaneously earned.
- (4) No attempts should be made to conceal costs from the attention of consumers.

## **10. Risk and warning disclosures**

- (1) An advertisement must adequately reflect and explain any special or unusual risks associated with relevant products / services.
- (2) Where the price of relevant products / services is denominated in a currency other than that of Mauritius or in virtual assets, the consumer must be warned that changes to the rates of exchange may have an effect on the value, price or income obtained from relevant products /services.

## **11. Cancellation rights**

- (1) Where cancellation rights apply, this right must be adequately disclosed, along with the liabilities attached to the exercise of such right, to consumers in the advertisement or in the terms and conditions of the contract attached to the relevant products / services. This includes stating what the specific conditions are for exercising a cancellation right.

## **PART IV – ADVERTISING CONDUCT STANDARDS**

## **12. Duties of the virtual asset service provider**

- (1) Any person making an advertisement of a virtual asset service provider shall at all times:
  - (a) act responsibly, with honesty, fairness, integrity and professionalism;
  - (b) avoid aggressive or offensive sale practices;
  - (c) deal respectfully with the consumers and ensure sufficient disclosure is made for them to make informed decisions;
  - (d) be at all times transparent regarding the nature of his relationship with the virtual asset service provider; and
  - (e) preserve confidentiality of the consumer's information, and not take advantage of such information for personal or another person's gain in conformity with the data protection law in Mauritius.
- (2) Any person acting on behalf of a virtual asset service provider shall, where appropriate:
  - (a) always disclose his full and accurate identity, at the time of introduction with consumers;
  - (b) always disclose to consumers before entering into any contract for relevant products / services, all benefits that will be paid to him, whether by way of fees, commissions, dividends (directly or indirectly) or otherwise under such contract, based on his relationship and interest that he may share with other parties which are associated with the relevant products / services; and
  - (c) only provide information in which he is competent and if necessary, recommend additional specialist advice to the consumers, as appropriate.

## **13. Inducements**

- (1) Virtual asset service providers shall not provide or cause to be provided unreasonable inducements or gifts to the consumers. Inducements may include entertainment and soft commissions. Inducements are unreasonable if they may constitute a real or apparent attempt to influence the choices or decisions of the consumers.
- (2) Virtual asset service providers must apply an objective test to determine the level of an inducement by taking into account all relevant criteria, including whether the gift or inducement:
  - (a) is reasonable and proportionate;
  - (b) is of a limited scale and nature (taking into account any other benefits offered); and/or
  - (c) does not need to be exclusively relied upon by the promoters in the future, in order to continue to service consumers.

A virtual asset service providers should take all reasonable steps to ensure that it, or any staff or representative acting on its behalf, does not offer, give, solicit or accept an inducement

which may conflict, in a significant way and adversely, with the responsibilities and accountabilities that it owes in relation to fair treatment towards consumers.

## **PART V – INTERNET ADVERTISEMENTS**

### **14. Internet Advertisement**

- (1) As regard the approval of advertisements on the internet, the following principles and standards must be followed:
  - (a) Virtual asset service providers must take all reasonable steps to ensure that any electronic advertisements of relevant products / services are identical to the most up-to-date paper versions;
  - (b) There shall be a prominent statement on the relevant web pages, which is capable of being seen or read with reasonable ease by the consumer accessing the electronic copies of such advertisements, to the effect that printed copies of the same are also available, as well as where and how they can be obtained; and
  - (c) Any advertisements on the relevant web pages shall remain available for as long as it is necessary for the consumers of the relevant products / services to have a reasonable opportunity to read or access them. Consumers must also be given the opportunity to retain the information through printing or downloading.
- (2) Where special software is necessary for the viewing of an advertisement, the software shall be provided for download, free of charge, before the consumers can gain access to the relevant web pages.

### **15. Bad internet advertising and marketing practices**

- (1) The virtual asset service provider must abstain from the following bad internet-based advertisement practices when making an advertisement over the internet:
  - (a) hiding essential information by the close proximity of promotional images and/or additional text.
  - (b) reducing risk warnings in importance due to their location outside of the main advertisement border.
  - (c) diminishing some statements which diminish through the use of small font sizes and unclear type styles.
  - (d) hiding important information within, or in some cases absent from, the respective internet landing page and only accessed through significant scrolling down and/or multiple page links.
  - (e) due to positioning, making risk warnings easy to overlook, resulting in consumers being taken directly to an application form (e.g. by clicking on to a banner advertisement or accepting a cookie).
  - (f) containing risk statements within a 'pop-up' box that only appears on the consumer's initial visit to the relevant website.
  - (g) obscuring key information/warnings, such as fees or exclusions, within the Internet website or placed under a separate section or heading, such as 'FAQs', 'Legal Information' or 'Disclaimers'.

- (h) not taking into account the different-sized browsers of consumers when positioning risk information (i.e. it is necessary to scroll down to access the information).
- (i) superimposing important information, statements or warnings across coloured or patterned backgrounds which lessen their visual impact.

#### **16. Non-written and direct marketing (includes cold calls)**

- (1) Virtual asset service providers shall not make a cold call unless the recipient has an established existing client relationship and the relationship is such that he has consented to respond to the cold call.
- (2) If any non-written marketing communication is initiated with consumers, the virtual asset service provider shall ensure that the person making the communication:
  - (a) only does so at a mutually convenient time of the day;
  - (b) clearly discloses his full and accurate identity at the time of introduction with consumers and makes clear the purpose of the communication;
  - (c) clarifies if the consumer wishes to continue with or to end the communication, and terminate the said communication at any time that the consumer so requests; and
  - (d) provides a place of contact to the consumer(s) with whom the communication is made.
- (3) The Commission is not responsible and liable for any non-written communication which is made during the course of personal visit, telephone conversation or other interactive dialogue by a virtual asset service provider. This shall be clearly conveyed to consumers, in any direct marketing or promotional materials

### **PART VI – RECORD KEEPING AND FILINGS**

#### **17. Record keeping**

- (1) A virtual asset service provider should maintain adequate records of its advertisements, including details of who signed off each advertisement and when it was signed off, for the longer of 7 years after the advertisement ceases to be available to consumers, or such other period which the Commission may request.

#### **18. Filings**

- (1) Advertisements targeting the general public should be filed with the Commission (14 days before their publication/issue), along with:
  - a. a statement of who approved the advertisement and when it was approved; and
  - b. a statement that the contents of the advertisement are in conformity with these rules.
- (2) The Commission may require that any advertisement be amended before its publication/issue, or that it shall not be published /issued.

#### **19. Commencement**

These rules shall come into operation on [DATE].

Made by the Financial Services Commission on [DATE].